Colloquium
Possible future work on PPPs
3-4 March 2014
Vienna International Centre
Session 4

Caroline Nicholas
UNCITRAL Secretariat
March 2014
Possible future work in PPPs

Selection procedures

* Legislative Guide, Chapter III; Recommendations 18-39
* MLPs 5-27

- Detailed provisions in PFIPs Instruments
- Procurement steps well-understood
- Traditional procurement focus on simpler projects
- More modern procurement laws have methods suitable for complex projects
  - Require tailoring to the PPPs context
  - More detail on planning and construction/operational phases
Possible future work in PPPs

Selection procedures

*Legislative Guide, Chapter III; Recommendations*

18-39 MLPs 5-27

- Other issues
  - Disclosure of terms of project agreement
    - procurement contract terms disclosed ex ante
  - Negotiations after selection of project company
  - Changes to project agreement
    - New procurement?
    - Transparency and accountability
Possible future work in PPPs

Domestic preferences
*Legislative Guide, Chapter III*

- Guide has outline guidance
- Common and sensitive issue in procurement
- Flexible approach in UNCITRAL Model Law on Public Procurement
  - More complex in PPPs environment
  - Quantifying preferences?
  - Public service obligations?
  - Sub-contracting?
Possible future work in PPPs

Review and challenge mechanisms

Legislative Guide, Chapter III; Rec. 39; MLP 27

- PFIPs Instruments have outline recommendations and guidance
- Pre-award disputes handled in detail in UNCITRAL Model Law on Public Procurement
  - Flexible approach designed to be adapted to local circumstances
- Model Law follows core principles in PFIPs Instruments
- Implements UN Convention against Corruption
- Provides remedies to aggrieved bidders
- Competence of public procurement review bodies can be extended to PPP disputes
Possible future work in PPPs

Unsolicited proposals

*Legislative Guide, Chapter III; Recommendations 30-35; MLPs 20-23*

- Controversial issue in most countries
- Agreement that approach of current Legislative Guide is appropriate
  - Genuinely innovative proposals can be taken up
- Other proposals in the public interest are subject to competitive selection procedures
- “In the public interest”?  
  - Unidentified infrastructure need  
  - Infrastructure plans, affordability
Possible future work in PPPs

Unsolicited proposals

*Legislative Guide, Chapter III; Recommendations 30-35; MLPs 20-23*

- Legislative Guide allows unidentified infrastructure need to be pursued
  - Possibility of modification of selection procedure
  - Compensating original proponent, Swiss challenge, etc

- Negotiations with a single bidder
  - Intellectual property issues

- Flexibility for unsolicited proposals can be abused to avoid procurement restrictions